

**ASSEMBLY BILL**

**No. 1023**

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**Introduced by Assembly Member Walters**

February 22, 2005

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An act to add Section 311.12 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1023, as introduced, Walters. Child exploitation.

Existing law provides that any person who possesses obscene matter, possesses obscene matter depicting a person under 18 years of age personally engaging in or simulating sexual conduct, duplicates matter that depicts a person under 18 years of age engaged in an act of sexual conduct, uses a minor to assist preparing obscene matter depicting a person under 18 years of age personally engaging in or simulating sexual conduct, publishes, distributes, or promotes matter held out to be obscene, advertises obscene matter depicting a person under 18 years of age personally engaging in or simulating sexual conduct, or possesses matter depicting a person under 18 years of age personally engaging in or simulating sexual conduct is guilty of a crime punishable by a fine, imprisonment in a county jail, or by both fine and imprisonment.

This bill would state legislative intent to eliminate misdemeanor or alternative misdemeanor or felony treatment of all child pornography or child exploitation offenses involving a person who is 14 years of age or younger. This bill would provide that any person who commits a violation of these provisions that involves a person who is 14 years of age or younger is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, unless a greater felony punishment is specified in that provision, in which case that punishment shall apply.

Because this bill would increase the prosecutorial duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature in enacting this  
2 measure to eliminate misdemeanor or alternative misdemeanor or  
3 felony treatment of all child pornography or child exploitation  
4 offenses involving a person who is 14 years of age or younger  
5 and to mandate that these offenses are uniformly felonies  
6 punishable by imprisonment in the state prison.

7 SEC. 2. Section 311.12 is added to the Penal Code, to read:

8 311.12. Any person who commits a violation of subdivision  
9 (a) or (c) of Section 311.2, subdivision (a) of Section 311.3,  
10 subdivision (a) of Section 311.4, Section 311.5, subdivision (a)  
11 of Section 311.10, or subdivision (a) of Section 311.11, involving  
12 a person who is 14 years of age or younger is guilty of a felony  
13 and shall be punished either by imprisonment in the state prison  
14 for 16 months, or two or three years, or, if it is greater, by the  
15 applicable felony punishment specified in that section.

16 SEC. 3. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the  
21 penalty for a crime or infraction, within the meaning of Section  
22 17556 of the Government Code, or changes the definition of a  
23 crime within the meaning of Section 6 of Article XIII B of the  
24 California Constitution.

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